



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0961; FRL-9824-5]

Approval and Promulgation of Air Quality Implementation Plans; Charlotte,

Raleigh/Durham and Winston-Salem Carbon Monoxide

Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the North Carolina State Implementation Plan (SIP), submitted by the State of North Carolina Department of Environment and Natural Resources (NC DENR), on August 2, 2012. Specifically, the State submitted limited maintenance plan updates for carbon monoxide (CO), showing continued attainment of the 8-hour CO national ambient air quality standard for the Charlotte, Raleigh/Durham and Winston-Salem Areas. EPA is approving this SIP revision because the State has demonstrated that the revision is consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0961. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

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I. Analysis of the State's Submittal

Section 175A of the Clean Air Act (CAA) contains four subsections (i.e., 175A(a)-(d)) pertaining to maintenance plans. Section 175A(a) establishes requirements for the maintenance plans associated with initial SIP redesignation requests. North Carolina previously addressed the 175A(a) requirements for the CO NAAQS and the State's redesignation requests and associated maintenance plans were ultimately approved by EPA for all three of North Carolina's CO areas as a result. *See* 59 FR 48399 and 60 FR 39258.

Section 175A(b) requires states to submit an update to the maintenance plan eight years following the original redesignation to attainment. For the section 175A(b) update, the state must outline methods for maintaining the pertinent NAAQS for ten years after the expiration of the ten-year period as referred to in subsection (a) (i.e., North Carolina's maintenance plan updates must outline methods for maintaining the CO NAAQS through 2015). NC DENR satisfied the requirements for the second maintenance plans for all of its CO maintenance areas, and EPA subsequently approved NC DENR's second maintenance plan for each of the State's CO maintenance areas. *See* 71 FR 14817,

March 24, 2006. Although North Carolina has previously satisfied the requirements for the 175A(b) maintenance plan updates for all of its CO areas, the State has elected to convert these maintenance plans to limited maintenance plans.¹ A summary of EPA's analysis for this revision is provided below.

Finally, with respect to the remaining sub-sections of section 175A, EPA notes that sub-section (c) does not apply to this rulemaking, given that EPA has previously redesignated the Charlotte, Raleigh/Durham, and Winston-Salem areas to attainment for CO. Section 175A(d), which includes the contingency provisions requirements associated with maintenance plans, is relevant to today's revision and is addressed in section A4, below.

A. Consistency with the October 6, 1995, Memorandum

EPA's interpretation of section 175A of the CAA, as it pertains to limited maintenance plans for CO, is contained in the October 6, 1995, Memorandum from Joseph W. Praise to the Air Branch Chiefs, Regions I-X, entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas." See the docket for today's rulemaking for a copy of this memorandum. North Carolina addressed the five major elements of that policy, as follows:

¹ A limited maintenance plan generally includes all the elements for a full section 175A maintenance plan except that a limited maintenance plan is not required to include motor vehicle emissions budgets for transportation conformity purposes. For more details on limited maintenance plans see the October 6, 1995, Memorandum from Joseph W. Praise to the Air Branch Chiefs, Regions I-X, entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas." A copy of the October 6, 1995, Memorandum is included in the docket for today's rulemaking.

1. Attainment Inventory

The state is required to develop an attainment emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time the SIP is developed and should include the emissions during the time period associated with the monitoring data showing attainment. It should be based on actual "typical CO season day" emissions for all source classifications (i.e., stationary point and area sources and nonroad and onroad mobile sources) for the attainment year. In its August 2, 2012, submittal, NC DENR provided a comprehensive CO emissions inventory for nonroad mobile, onroad mobile, point, and area sources for the Charlotte, Raleigh-Durham, and Winston-Salem CO Maintenance Areas.

NC DENR collected or developed the point source emissions inventory from stationary sources that have the potential to emit more than five tons per year of CO emissions from a single facility and are required to have an operating permit. The stationary area source inventory is estimated on a county level and consisted of those sources whose emissions are relatively small, but due to the large number of sources, the collective emissions could be significant. North Carolina estimated the stationary area source emissions by multiplying an emission factor by some known indicator of collective activity (such as fuel usage, number of households, or population). For on-road mobile source emissions, NC DENR used EPA's Motor Vehicle Emission Simulator (MOVES) model version 2010a (MOVES2010a), released in August 2010, for estimating vehicle emissions.

Nonroad mobile sources are pieces of equipment that can move but do not use roadways (e.g. lawn mowers, construction equipment, railroad locomotives, and aircraft). The emissions from this category are calculated at the county level using EPA's NONROAD2008s nonroad mobile model, with the exception of railroad locomotives and aircraft engines. The railroad locomotives and aircraft engines are estimated by taking an activity and multiplying by an emission factor.

Table 1 displays the 2010 attainment year emissions inventory as required for the limited maintenance plans. Appendix B of North Carolina's SIP submittal provides detailed discussions regarding the development of emissions for the four emission source classifications, and is provided in the docket for today's rulemaking.

Table 1. 2010 CO Emissions (tons/day) for Maintenance Areas

County	Point Source	Area Source	On-Road	Nonroad	Total
Raleigh-Durham Maintenance Area					
Durham	0.97	1.54	186.00	19.04	207.55
Wake	1.17	4.26	642.97	70.62	719.02
Total	2.14	5.80	828.97	89.66	926.57
Winston-Salem Maintenance Area					
Forsyth	2.22	1.41	244.16	23.97	271.76
Charlotte Maintenance Area					
Mecklenburg	2.39	4.21	724.39	114.71	845.70

2. Maintenance Demonstration

In the October 6, 1995, Memorandum, EPA stated that the maintenance demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data shows that the area is meeting the air quality criteria for limited

maintenance areas (i.e., 85 percent of the eight hour CO NAAQS, or 7.65 parts per million (ppm)). EPA determined in this same memorandum that there is no requirement to protect emissions over the maintenance period. Instead, EPA believes that if the area begins the maintenance period at, or below, 7.65 ppm (85 percent of the 8-hour CO NAAQS), the applicability of prevention of significant deterioration requirements, control measures already in the SIP, and other federal measures should provide adequate assurance of maintenance throughout the maintenance period. Monitoring data from 2008-2011 shows all three areas below the 8-hour CO NAAQS values. See Table 2 below. All monitoring levels are well below the 85 percent threshold of 7.65 ppm and therefore the State has satisfied the maintenance demonstration requirement for a limited maintenance plan for each of its CO maintenance areas.

Table 2. CO 8-Hour Monitored Concentration Design Values (ppm)

County	Monitor ID	2009	2010	2011	8-hr NAAQS
Raleigh-Durham Maintenance Area					
Wake	371830014	1.3 ²	1.3	1.4	9
Winston-Salem Maintenance Area					
Forsyth	370670023	1.7	1.9	2.1	9
Charlotte Maintenance Area					
Mecklenburg	371190041	1.7	1.7	1.5	9

3. Monitoring Network and Verification of Continued Attainment

Once an area has been redesignated, the state should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. This is particularly important for areas using a limited maintenance plan because there will be no cap on emissions. In accordance with 40 CFR part 58, NC DENR commits to continue monitoring CO at the existing regulatory

² The Direct Final Rulemaking on February 22, 2013, listed the Wake County 2009 design value as 1.3 ppm. See 78 FR 12238. The value reported by the State was actually 1.2 ppm and the change is reflected in this final rulemaking.

monitors in the three CO maintenance areas to ensure that CO concentrations remain well below the 7.65 ppm threshold for limited maintenance plans. The State's monitoring plan for 2012 can be found at the following site:

http://www.ncair.org/monitor/monitoring_plan/new_plan/2012_NCDAQ_Network_Plan.pdf. EPA has determined that the State has satisfied the monitoring network and verification of continued attainment requirements for the limited maintenance plans.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of an area. The October 6, 1995, Memorandum further requires that the contingency provisions identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the state.

In its August 2, 2012, submittal, NC DENR committed to the same contingency measures that EPA previously approved on March 24, 2006 (71 FR 14817) and a subsequent clarification on June 19, 2007 (72 FR 33692). The State pre-adopted an oxygenated fuels program with minimum oxygen content by weight of 2.7 for Charlotte, Raleigh-Durham, and Winston-Salem maintenance areas as a contingency measure for the CO maintenance plan. The oxygenated fuel program is required under the CAA for the Raleigh-Durham and Winston-Salem areas as a required control measure prior to the attainment redesignation. Charlotte was placed under the oxygenated fuel program for effective area-wide CO emission reduction and to ease State implementation efforts. The

contingency measure triggering date will be no more than 60 days after an ambient air quality violation is monitored. NC DENR will commence an analysis and regulation development process during this time. The State will consider the following control measures:

- a. amending the oxygenated fuels program by adopting oxygenate content of 2.0 percent to 2.7 percent by weight, or activate of the 2.7 percent by eight pre-adopted contingency measure, or 2.7 percent to 3.1 percent by weight;
- b. expanding coverage of oxygenated fuels to include counties where a strong commuting pattern into the core maintenance area exists;
- c. alternative fuel vehicle programs to include compressed natural gas and electric vehicles; and,
- d. employee commute options programs.

NC DENR committed to implement at least one of the control measures within 24 months of the trigger, or as expeditiously as practicable. EPA has determined that the State has satisfied the contingency plan requirements pursuant to section 175A(d) of the CAA as well as those of the October 6, 1995, Memorandum.

5. Conformity Determination under the Limited Maintenance Plan

The transportation conformity rule of November 24, 1993 (58 FR 62188), and the general conformity rule of November 30, 1993 (58 FR 63214), apply to nonattainment areas and maintenance areas operating under the maintenance plans. Under either rule, one means of demonstrating conformity of federal actions is to indicate that expected

emissions from planned actions are consistent with the emissions budget for the area.

EPA's October 6, 1995, Memorandum states that emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, EPA concluded that, for these areas, emissions need not be capped for the maintenance period.

In accordance with the transportation conformity rule, approval of a limited maintenance plan only removes the requirement to conduct a regional emissions analysis as part of the conformity determination. The requirement to demonstrate conformity per the requirements in Table 1 of 40 CFR 93.109 still applies. Additionally, federally funded projects are still subject to project level transportation conformity analysis requirements. However, no regional modeling analysis would be required.

Transportation partners should note this approval of these limited maintenance plans in future transportation conformity determinations. Additionally, while the approvals of these limited maintenance plans waives the requirements for a regional emissions analysis for the CO NAAQS, as mentioned above, it does not waive other conformity requirements for the CO standard for the Charlotte, Raleigh-Durham and Winston-Salem areas, and it does not waive transportation conformity requirement for other pollutants/precursors for which these areas may be designated nonattainment or redesigned to attainment with a full maintenance plan.

II. Response to Comments

On February 22, 2013 (78 FR 12267), EPA published a direct final rule approving North Carolina's August 2, 2012, SIP submission for a limited maintenance plan update for CO, showing continued attainment of the 8-hour CO NAAQS for the Charlotte, Raleigh/Durham and Winston-Salem Areas. EPA published an accompanying proposed approval in the event that comments were received such that the direct final rule needed to be withdrawn. Specifically, in the direct final rule, EPA stated that if adverse comments were received by March 25, 2013, the rule would be withdrawn and not take effect, but that the proposed rule would still remain in effect and that an additional public comment period would not be instituted if EPA could sufficiently address any comments received on the direct final rulemaking. On March 25, 2013, EPA received comments from a single commenter. The comments could be interpreted as adverse and, therefore, EPA withdrew the direct final rule. A summary of the comments received and EPA's response is provided below.

Comment: The commenter stated "were studies conducted to establish the criteria for labeling as a maintenance area? Is there something geographic and standard about this area."

Response: This comment is outside of the scope of today's action. Nonetheless, EPA notes that the process to designate a maintenance area under the CO NAAQS involves an evaluation of specific criteria to determine whether an area is in compliance or out of compliance with the CO NAAQS. If an area is determined to be out of compliance, EPA

then determines an appropriate boundary for the area and designates the area as a “nonattainment” area. The designation process for CO areas was completed in the early 1990’s. The Charlotte, Raleigh/Durham and Winston-Salem Areas were all designated as nonattainment for the CO NAAQS. Once an area is designated nonattainment, an area can be redesignated to “attainment” (i.e., meaning that the area is in compliance of the NAAQS), if it meets the criteria of section 107(d)(3)(E) of the CAA. All three of the North Carolina areas were redesignated to “attainment” for the CO NAAQS and are thus considered “maintenance” areas. *See* 59 FR 48399 and 60 FR 39258.

Comment: The commenter questioned whether the emissions parameters are “constricting the water vapor potential” and whether the emissions tolerances are “excessive considering most dealerships are manufacturing cars that use alternative energies and have done so for approximately 10 years now[?]”

Response: The on-road mobile source emissions inventory in North Carolina’s limited maintenance plans for the Charlotte, Raleigh/Durham and Winston-Salem Areas were developed according to EPA guidelines and with the MOVES emissions model. The MOVES model can be used to estimate exhaust and evaporative emissions as well as brake and tire wear emissions from all types of on-road vehicles. The MOVES model incorporates substantial new emissions test data and accounts for changes in vehicle technology and regulations as well as improved understanding of in-use emission levels and the factors that influence them. NC DENR appropriately utilized the MOVES model to estimate the on-road mobile source emissions for the limited maintenance plan for all applicable vehicles and technologies, for the Charlotte, Raleigh/Durham and Winston-Salem Areas.

III. Final Action

EPA is approving the aforementioned changes to the State of North Carolina SIP, because they are consistent with the CAA, and EPA's policy related to limited maintenance plans.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the

Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file any comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 7, 2013.

A. Stanley Meiburg,

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart II - North Carolina

2. Section 52.1770(e) is amended by adding a new entry for “8-Hour Carbon Monoxide

Limited Maintenance Plan for Charlotte, Raleigh/Durham and Winston-Salem

Maintenance Area” at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA Approved North Carolina Non-regulatory Provisions

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
**	**	*	*	*
8-Hour Carbon Monoxide Limited Maintenance Plan for Charlotte, Raleigh/Durham and Winston-Salem Maintenance Area	August 2, 2012	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	

[FR Doc. 2013-14507 Filed 06/19/2013 at 8:45 am; Publication Date: 06/20/2013]